

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

IN RE:

CHARLES E. ENGLISH, III,  
  
Debtor.

CASE NO. 99-13129-WSS  
  
Chapter 7

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CHARLES E. ENGLISH, III,  
  
Plaintiff/Debtor,

v.

ADV. PROC. NO. 99-1247

PAMELA ENGLISH CLEARMAN,  
  
Defendant.

**ORDER ON DEBTOR'S AMENDED COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT**

Jay Ross, Attorney for the Plaintiff  
Barry Friedman, Attorney for Pamela Clearman

This matter is before the Court on the Plaintiff's amended complaint to determine dischargeability of debt pursuant to 11 §523(a)(5). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). After due consideration of the pleadings, evidence, testimony and arguments of counsel, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

The Plaintiff, Charles English ("English"), and the Defendant, Pamela English Clearman

(“Clearman”), were married for approximately eleven years, and had one child.<sup>1</sup> They were divorced by judgment of the Circuit Court of Mobile County, Alabama (“the Domestic Relations Court”) on September 25, 1996. Clearman initiated the divorce proceedings and was represented by counsel. English did not have separate legal counsel, and negotiated the terms of the settlement agreement on his own behalf. The Domestic Relations Court entered the divorce judgment based on the parties’ settlement agreement.

The Domestic Relations Court awarded custody of the minor child to Clearman. In paragraph 3 of the judgment, English was required to pay child support of \$480.00 per month in \$110.00 weekly installments. English testified that the \$480.00 payment for child support was more than the amount required under Rule 32 Child Support Guidelines of the Rules of Judicial Administration. The guidelines required him to pay at least \$459.00. Paragraph 14 required English to pay all utilities and all notes on the 1989 Dodge Caravan for October and November 1996 as additional support and maintenance for the child. English was also responsible for hospitalization, major medical and dental insurance, including any extraordinary medical or related expenses not covered by insurance, under paragraph 15 of the judgment. Paragraph five ordered English to pay Clearman \$50.00 per month as periodic alimony.<sup>2</sup>

English and Clearman jointly owned a home encumbered by a mortgage. English testified that they had some amount of equity in the property, although he did not know an exact amount. Paragraph seven of the divorce judgment deals with the mortgage:

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<sup>1</sup>Clearman has one child from a previous marriage.

<sup>2</sup>The parties stipulated to the information contained in the preceding paragraph.

The Defendant shall, as property settlement, pay and be solely responsible for the indebtedness owed on the mortgage, the taxes and insurance on said homeplace and he shall indemnify and hold the Plaintiff harmless as to any liability for same. In addition, in the event the Plaintiff shall sell or move from said homeplace, the Defendant shall pay directly to the Plaintiff the sum of \$570.00 per month until the minor child attains the age of nineteen (19) years all such payments shall be property settlement.

English testified that he agreed to the \$570.00 payment because Clearman was unemployed and had no way to pay the mortgage on the home. He believed the payment would “help get her on her feet.” English testified that he expected the payment to end if and when Clearman remarried. He stopped making the payment when he filed his bankruptcy proceeding. English testified that he does not know whether the payment were claimed as deductions on his federal income tax returns.

At the time of the divorce, English was employed by South Central Pool Supply Company. He became interested in photography as a hobby during the marriage, and later worked part-time as a photographer. English testified that Clearman did not assist him in any way with the photography business.

English testified that the original settlement agreement had a provision that required him to pay a certain amount toward his child’s college education. English objected to the provision because he could not afford it. Clearman’s attorney removed the provision.

English testified that Clearman initiated the divorce proceedings. He denied that he was involved in an extramarital affair. However, he signed a letter dated September 12, 1996<sup>3</sup> in which he admitted to “adulterous misconduct”, and offered to amend his answer and waiver in the divorce proceeding to reflect his admission. English testified at the hearing on this matter

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<sup>3</sup>See Defendant’s Exhibit 1.

that Clearman's attorney drafted the letter and he signed it for Clearman's "mental comfort." English stated that Clearman was concerned that people would think badly of her for initiating the divorce.

Clearman maintains that English wanted the divorce. She testified that during the discussions with her attorney and English, the \$570.00 payment was intended to pay the mortgage on the home until her son reached 19 years of age. Clearman stated that the payment was meant to be additional support for her and her two children. She maintains that all parties understood that the payments would continue even if she moved out of the home until her son reached age 19. Clearman stated that she could not have stayed in the home without the \$570.00 payment. Clearman testified that since English could not pay for their son's college education, he agreed to make the \$570.00 payment as extra support for him. Clearman stated that she discussed alimony and property settlement in terms of which type of payment would be taxable. Clearman did not claim the payment as income, but she did claim the \$50.00 alimony as income. Clearman sold the home and received between \$5,000.00 and \$10,000.00 cash. She used the money to make payments on a new home. She remarried in June 1999.

### **CONCLUSIONS OF LAW**

Section 523(a)(5) discharges a debtor from any debt that is: "to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record . . . [where] such liability is actually in the nature of alimony, maintenance, or support." The Court's inquiry should focus on the substance of the obligation rather than its label or form. Ackley v. Ackley, 187 B.R. 24, 26 (N.D. Ga. 1995); In re Bedingfield, 42 B.R. 641, 645 (S.D. Ga. 1983).

It has long been held that the issue of whether a particular debt is a support obligation or part of a property settlement is governed by federal bankruptcy law, rather than by state law. See Carver v. Carver, 954 F.2d 1573, 1578-79 (11<sup>th</sup> Cir. 1992); In re Harrell, 754 F.2d 902, 905 (11<sup>th</sup> Cir. 1985). However, state law should not be ignored in such determinations. Bedingfield, 42 B.R. at 645.

To determine whether a debt should be classified as alimony or support rather than part of a property settlement, courts employ some or all of the following factors: 1) whether applicable state law would deem the obligation to be alimony or property settlement; 2) whether the obligation ends upon the happening of contingencies, such as remarriage; 3) whether the payments are periodic or lump sum; 4) whether the obligation was constructed to reduce the disparities in the parties' relative earning power; 5) whether the spouse is directly or indirectly benefitted by the payment; and 6) whether the parties have minor children whose support is in question. See In re MacDonald, 194 B.R. 283, 287 (Bankr. N.D. Ga. 1996); In re Snipes, 190 B.R. 450, 452 (Bankr. M.D. Fla. 1995); and Appling v. Rees, 187 B.R. 27, 29 (N.D. Ga. 1995).

While the state law characterization of the disputed payment is not determinative, it is beneficial to the Court's analysis. Alabama law recognizes periodic alimony and alimony in gross. An award of periodic alimony provides maintenance and support for a former spouse and can be modified. There are two requirements for alimony in gross: 1) the time and amount of payments must be certain; and 2) the right to receive payment must be vested and not subject to modification. In re Delaine, 56 B.R. 460, 466 (Bankr. N.D. Ala. 1985). Alimony in gross is considered a property settlement and therefore dischargeable in a bankruptcy proceeding. In re Stone, 199 B.R. 753, 757 (Bankr. N.D. Ala. 1996).

As required under the definition of alimony in gross, the payments were due for a specific time and for a certain amount. In Paragraph 20 of the divorce judgment, the state court retains jurisdiction to make further orders “as to the custody, support, and maintenance of said minor children”, but does not retain jurisdiction to modify any other provisions of the judgment. It appears that the payment was vested and not subject to modification. Under Alabama law, the payment would be considered alimony in gross and therefore a property settlement.

The Court must also weigh the other factors such as whether the obligation ends upon the happening of contingencies, such as remarriage. The \$570.00 payments are not tied to contingencies such as remarriage or cohabitation. The payments will end when the minor child reaches 19 years of age. The payments are periodic and not lump sum. However, property settlements can be made in periodic payments or in a lump sum. As to whether the obligation was constructed to reduce the disparities in the parties’ relative earning power, both English and Clearman testified that the payments would assist Clearman in paying the mortgage because she was not working.

The final two factors of whether the spouse is directly or indirectly benefitted by the payment, and whether the parties have minor children whose support is in question can be considered together. Clearman obviously benefitted from the payments. However, the decree already provided for \$50 per month in periodic alimony for Clearman, and \$480 per month for child support. The child support award actually exceeds the amount required by state law. Looking at the decree as a whole, it appears that adequate provisions were already in place for providing maintenance and support for Clearman and her son. This circumstance, coupled with the fact that Alabama law characterizes the payments as alimony in gross, leads the Court to the

conclusion that the disputed payments were in fact intended to be a property settlement rather than in the nature of alimony and support. Even though labels attached to payments in a divorce decree “are not controlling on the question of the true nature of the obligation,”<sup>4</sup> the fact that the payments were also clearly identified as a property settlement further convinces the Court that the parties considered the issue of whether the payments should be classified as alimony or property settlement, and chose to identify them as a property settlement. Based on the foregoing, the Court finds the relief sought in the Plaintiff’s amended complaint to determine dischargeability of debt pursuant to 11 §523(a)(5) is due to be granted. It is hereby

**ORDERED** that the relief sought in the Plaintiff’s amended complaint to determine dischargeability of debt pursuant to 11 §523(a)(5) is **GRANTED**; and it is further

**ORDERED** that the debt owed by the Plaintiff, Charles English, to the Defendant, Pamela English Clearman, is **DISCHARGED** pursuant to 11 U.S.C. §523(a)(5) and a judgment finding the debt to be dischargeable shall be entered in favor of the Plaintiff, Charles English, and against the Defendant, Pamela English Clearman.

DATED: July \_\_\_\_, 2001

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WILLIAM S. SHULMAN  
U.S. BANKRUPTCY JUDGE

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<sup>4</sup>Anderson v. Anderson, 686 So.2d 320, 324 (Ala. Civ. App. 1996), citing Matter of Hughes, 16 B.R. 90 (Bankr. N.D. Ala. 1981).

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**JUDGMENT**

These proceedings having come on for hearing before the Court and a decision having been duly rendered; it is

**ORDERED AND ADJUDGED** that pursuant to Rule 58 of the Federal Rules of Civil Procedure and Bankruptcy Rule 9021, a **JUDGMENT** discharging the debt of Charles English to Pamela English Clearman be and it hereby is **ENTERED** in favor of the Plaintiff, Charles English, and against the Defendant herein, Pamela English Clearman.

DATED: July \_\_\_\_, 2001

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WILLIAM S. SHULMAN  
U. S. BANKRUPTCY JUDGE